

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Notice of Intended Action**

**Proposing rule making related to contested case proceedings  
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to amend Chapter 26, “Contested Case Proceedings,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 96.11.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 96.

*Purpose and Summary*

The proposed amendments remove language allowing the presiding officer to vacate a decision, reopen the record, and schedule a new hearing once a decision has been issued. The existing language can result in situations where a party simultaneously appeals the decision of the presiding officer to the Employment Appeal Board (EAB) and requests a reopening of the record to the Appeals Bureau.

The current language is problematic for three main reasons. First, the existing rule can cause duplication of work or delay in final case resolution, or both, if a party simultaneously files a request to reopen the record and appeals to the EAB. Second, the existing rule causes unnecessary confusion for a party who disagrees with a decision from the Administrative Law Judge. These amendments will make it clear that the proper course of action for such a party before a decision is issued is to request that the record be reopened, while the proper course of action after a decision has been issued is to appeal the decision to the EAB. Finally, these amendments will alleviate confusion for parties who mistakenly believe a request to reopen the record has the same legal effect as filing an appeal and therefore fail to file an appeal after a request to reopen the record is denied.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Nicole Merrill, Chief Administrative Law Judge  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Email: [Nicole.Merrill@iwd.iowa.gov](mailto:Nicole.Merrill@iwd.iowa.gov)

### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 26.8(3) as follows:

**26.8(3)** If, for good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. ~~If a decision has been issued, the decision may be vacated upon the presiding officer’s own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.~~

“Good cause” for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include, but are not limited to, death, sudden illness, or accident involving the party or the party’s immediate family (spouse, partner, children, parents, sibling) or other circumstances evidencing an emergency situation which was beyond the party’s control and was not reasonably foreseeable. Examples of circumstances that do not constitute good cause include, but are not limited to, a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

ITEM 2. Amend subrule 26.8(5) as follows:

**26.8(5)** If good cause for postponement or reopening has not been shown, the presiding officer ~~shall~~ may make a decision based upon whatever evidence is properly in the record or in appropriate cases may enter default as set forth in rule 871—26.14(17A,96).

ITEM 3. Amend subrule 26.14(6), introductory paragraph, as follows:

**26.14(6)** If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened ~~if no decision has been issued~~ and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

ITEM 4. Amend subrule 26.14(7), introductory paragraph, as follows:

**26.14(7)** If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if no decision has been issued and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.